

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	
)	
IN THE MATTER OF:)	DETERMINATION
CANCELLATION OF AWARD)	
)	CASE NO.: 2008-110
MATERIALS MANAGEMENT OFFICE)	
)	POSTING DATE:
)	
FUEL TANKER BODIES)	MAY 5, 2008
<u>IFB No. 5400000241</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a request from the Materials Management Office (MMO) under the provisions SC Code Ann §11-35-1520(7) and SC Regulation 19-445.2085(C) to cancel its award to Oilman's Truck Tanks, Inc. (Oilman's) prior to performance due to an administrative error.

CPO FINDINGS

February 26, 2008, MMO posted invitation for bids number 5400000241 for tanker bodies.

On March 11, 2008, MMO issued Amendment No. 1.

On March 12, 2008, MMO issued Amendment No. 2.

On March 20, 2008, MMO opened the following bids:

<u>Bidder</u>	<u>Bid</u> ¹
AMTHOR, Inc.	\$375, 266
Oilman's Truck Tanks, Inc	375,354

On March 28, 2008, after applying the procurement preferences, MMO posted an intent to award to Oilman's.

On April 4, 2008, John Stevens, State Procurement Officer, asked the CPO to cancel the award to Oilman after award, but prior to performance, under authority of SC Reg. 19-445.2085(C) due to an administrative error.

¹ The prices shown are the total price for the basic units plus bid options.

According to Mr. Stevens, the “[p]references were applied in error and resulted in the incorrect offer being determined the lowest responsive and responsible.” He wrote further, “The base unit prices of the 2 offers were both greater than \$30,000 (\$36,999 & \$37,121 respectively.) The higher of the 2 offers, Oilman’s Truck Tanks, Inc., also included a request for the Resident Vendor Preference (RVP). When Richard Brinkley, Procurement Manager, applied the RVP in error, the apparent lowest responsive and responsible offer was mathematically determined to be Oilman’s Truck Tanks, Inc.”

DETERMINATION

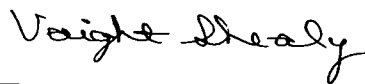
Richard Brinkley, MMO Procurement Manager, applied the resident vendor preference requested by Oilman’s, determined Oilman’s to be the lowest responsible and responsive bidder, and issued its an intent to award.

The unit prices offered by the bidders were as follows²:

AMTHOR	\$37,121.00
Oilman’s	36,999.00

The Consolidated Procurement Code excludes from the resident vendor preference, “any solicitation, bid, offer, or procurement when the price of a single unit of the end-product is more than thirty thousand dollars.” [11-35-1524(D) (3)].

It is determined that the resident vendor preference was applied inappropriately in this case; in violation of SC Code section 11-35-1524, resulting in the intent to award being issued in error. The award was issued to Oilman in violation of law. Therefore, the award is cancelled in accordance with SC Reg. 19-445.2085 (C).



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

May 5, 2008

² The unit prices shown are not adjusted to include the bid options.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determinations, decisions, policies, and procedures.

Additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5: The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement 00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2005 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2005 S.C. Act No. 115, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm